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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 DOMINGO GERMAN MACAVILCA,

12 Plaintiff,

13 v.

14 WARDEN WIGGEN, et al.,

15 Defendants.  
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No. C08-5637 FDB/KLS

ORDER DIRECTING SERVICE BY U.S.  
MARSHAL OF COMPLAINT

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18 This civil rights action has been referred to the undersigned Magistrate Judge pursuant to  
19 Title 28 U.S.C. § 636(b)(1)(B). The plaintiff has been granted leave to proceed *in forma*  
20 *pauperis*. Plaintiff has provided service copies and filled out service forms. The clerk is directed  
21 to effect service as provided below.

22 (I) Service by United States Marshal

23 It is hereby ORDERED that the United States Marshal shall send each named defendant  
24 by first class mail, a copy of the Complaint and of this Order, two copies of the Notice of  
25 Lawsuit and Request for Waiver of Service of Summons, a Waiver of Service of Summons, and  
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1 a return envelope, postage prepaid, addressed to the Clerk's Office. Pursuant to Federal Rule of  
2 Civil Procedure 4(i), the United States Marshall shall also send each of the aforementioned  
3 documents by certified mail to the Attorney General of the United States at Washington, District  
4 of Columbia, and to the United States Attorney for the Western District of Washington.

5 All costs of service shall be advanced by the United States. The Clerk shall assemble the  
6 necessary documents to effect service. The Clerk also shall send a courtesy copy of the  
7 Complaint to both the United States Attorney for the Western District of Washington and Joan  
8 K. Mell, Attorney at Law, III Branches Law PLLC, 1033 Regents Blvd., Suite 101, Fircrest, WA  
9 98466.

11 (2) Response Required

12 Defendants shall have **thirty (30) days** within which to return the enclosed Waiver of  
13 Service of Summons. Each defendant who timely returns the signed Waiver shall have **sixty**  
14 **(60) days** after the date designated on the Notice of Lawsuit to file and serve an answer or a  
15 motion directed to the complaint, as permitted by Rule 12 of the Federal Rules of Civil  
16 Procedure.

17 Any defendant who fails to timely return the signed Waiver will be personally served  
18 with a summons and complaint, and may be required to pay the full costs of such service,  
19 pursuant to Rule 4(d)(2). A defendant who has been personally served shall file an answer or  
20 motion permitted under Rule 12 within **thirty (30) days** after service.

21 (3) Filing and Service by Parties, Generally

22 All original documents and papers submitted for consideration by the court in this case,  
23 are to be filed with the Clerk of this court. The originals of all such papers shall indicate in the  
24 upper right-hand corner the name of the Magistrate Judge to whom the copies are to be  
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1 delivered. The papers shall be accompanied by proof that such documents have been served  
2 upon counsel for the opposing party (or upon any party acting *pro se*). The proof shall show the  
3 day and manner of service and may be written acknowledgment of service, by certificate of a  
4 member of the bar of this court, or by affidavit of the person who served the papers.

5 (4) Motions

6 Any request for court action shall be set forth in a motion, properly filed and served. The  
7 motion shall include in its caption (immediately below the title of the motion) a designation of  
8 the Friday upon which the motion is to be noted upon the court's calendar. That date shall be the  
9 third Friday following filing of the motion (fourth Friday for Motions for Summary Judgment).

10 All briefs and affidavits in opposition to any motion shall be filed and served not later than 4:30  
11 p.m. on the Monday immediately preceding the Friday appointed for consideration of the motion.

12 If a party fails to file and serve timely opposition to a motion, the court may deem any opposition  
13 to be without merit. The party making the motion may file, not later than 4:30 p.m. on the  
14 Friday designated for consideration of the motion, a response to the opposing party's briefs and  
15 affidavits.

16 (5) Motions for Summary Judgment

17 If one of the parties files a motion for summary judgment pursuant to Federal Rules of  
18 Civil Procedure 56, the opposing party should acquaint him/herself with Rule 56. Rule 56  
19 requires a nonmoving party to submit affidavits or other evidence in opposition to a motion for  
20 summary judgment if the moving party has shown the absence of issues of material fact and an  
21 entitlement to judgment as a matter of law. A nonmoving party may not rest upon the mere  
22 allegations or denials of prior pleadings. Rather, successful opposition to a motion for summary  
23 judgment requires the nonmoving party to set forth, through affidavits or other evidence, specific  
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1 facts showing a genuine issue for trial. Failure by the nonmoving party to oppose a summary  
2 judgment motion or to present counter evidence could result in the court accepting the moving  
3 party's evidence as the truth, and entering final judgment in favor of the moving party without a  
4 full trial. *Rand v. Rowland*, 113 F.3d 1520 (9<sup>th</sup> Cir. 1997).

5 (6) Direct Communications with District Judge or Magistrate Judge

6 No direct communication is to take place with the District Judge or Magistrate Judge with  
7 regard to this case. All relevant information and papers are to be directed to the Clerk.  
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9 (7) Clerk's Action

10 The Clerk is directed to send a copy of this Order and of the General Order issued by the  
11 Magistrate Judges to Plaintiff.  
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13 DATED this 28th day of May, 2009.  
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17 Karen L. Strombom  
18 United States Magistrate Judge  
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